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IN THE DISTRICT COURT, FIRST JUDICIAL DISTRICT

COUNTY OF LARAMIE, STATE OF WYOMING

Docket No. 182-153

CAROLIN MILLER,

Plaintiff,

v.

UNION PACIFIC RAILROAD,

Defendant.

FILED

FEB 07 2014

SANDY LANDERS
CLERK OF THE DISTRICT COURT

COMPLAINT

Plaintiff, Carolin Miller, for her claims for relief against Defendant, Union Pacific Railroad, states and alleges the following:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff is a resident and citizen of the State of Colorado, domiciled in Larimer County, Colorado.
2. Defendant is a railroad, operating a system of railroads in the State of Wyoming and in this judicial District. Defendant is a common carrier engaged in interstate commerce.
3. Plaintiff is, and was at all relevant times, employed by Defendant, and was therefore also engaged in interstate commerce.
4. Jurisdiction of this Court is based on 45 U.S.C. § 51 *et seq.*, commonly known as the Federal Employer's Liability Act (FELA).
5. Plaintiff has been employed by Defendant in various capacities since October 28, 1998. From approximately March, 2012 to June 20, 2013, Plaintiff was engaged in the course and scope of her duties as an Administrative Assistant at the Union Pacific Steam Locomotive

Shop in Cheyenne, Wyoming.

6. From approximately March, 2012 to June 20, 2013, Plaintiff suffered injuries as more fully described below as a result of Defendant's negligence and/or the negligence of Defendant's officers, agents, or employees.

7. Under 45 U.S.C. § 51, Defendant is liable for the injuries sustained by Plaintiff resulting in whole or in part from its negligence or the negligence of any of its officers, agents, or employees.

8. Venue is proper in this District because Defendant operates a railroad and maintains an office in the State of Wyoming and the cause of action arose in the State of Wyoming.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

9. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 9 above.

10. From October 28, 1998 to June 20, 2013, Plaintiff was employed in various union and non-union positions with Defendant in California, Nevada, Colorado, and Wyoming. Since March of 2012, Plaintiff has been employed by Defendant as an Administrative Assistant at the Union Pacific Steam Locomotive Shop ("Steam Shop") in Cheyenne, Wyoming.

11. Approximately three years before Plaintiff was hired as an Administrative Assistant at the Steam Shop, Defendant hired Edgar Dickens as Senior Manager of Steam Operations to oversee the operations in the Steam Shop. Prior to his hiring as Senior Manager, Dickens had a reputation for creating conflict, harassing fellow co-workers, and other questionable behavior. A complaint was even filed against him in approximately 2006 with the Equal Employment Opportunity (EEO) Department at Union Pacific.

12. As Senior Manager of Steam Operations, Dickens acted in accordance with his reputation and history. Dickens criticized and demeaned employees at the Steam Shop. He attempted to instruct the employees in their respective areas of expertise, oftentimes demanding that they perform their duties contrary to how they had been trained and contrary

to standard practices and procedures, which created dangerous conditions at the Steam Shop. When these dangerous conditions became known to Union Pacific personnel higher up in the chain of command, Dickens hid the truth and blamed his employees. Dickens exacerbated these dangerous conditions by requiring employees to work outside their area of expertise, requiring long hours, and sometimes refusing to allow restroom breaks. Dickens even instructed employees, including Plaintiff, not to cooperate with the Federal Railway Administration (FRA) or communicate with them in any way outside of his presence.

13. This was the general condition of the Steam Shop when Plaintiff interviewed for a position as Administrative Assistant in February of 2013. Plaintiff had been warned by fellow Union Pacific employees in Colorado that Dickens was vindictive and impossible to work with. Nevertheless, Plaintiff took the interview. The interview took place in Dickens' office at the Steam Shop. Upon seeing Plaintiff, Dickens stated that she looked very nice. Other than Plaintiff, the only person physically present in the room was Dickens. The hiring manager and director of the Steam Shop program later participated in the interview by phone. While the interview seemed to go well, Plaintiff felt uncomfortable throughout, as Dickens had Plaintiff sit at his desk in his chair while Dickens sat directly behind Plaintiff in another chair. At various times throughout the interview, Plaintiff looked over her shoulder to find Dickens hovering over her.

14. Notwithstanding the uneasiness Plaintiff felt during the interview and resulting trepidation at the prospect of working with Dickens, Plaintiff took the job and joined the Steam Shop as an Administrative Assistant in March of 2012 because it was a good job opportunity for her and her family.

15. Immediately upon her arrival, Plaintiff informed Dickens about her carpal tunnel and pronator teres syndromes and requested that she be set up with an ergonomically sound work station (e.g., ergonomically sound chair, desk, monitor, and keyboard, arranged appropriately) in order to avoid further complications or exacerbations of her conditions. Dickens agreed that she needed the proper work equipment and configuration, but whenever

Plaintiff requested authorization to purchase the proper equipment, Dickens asked her to hold off. This went on for several months. Notwithstanding the pain in her wrists, elbows, shoulders, and neck due to her unsuitable work station, Plaintiff worked and fulfilled her duties as Administrative Assistant on a daily basis. Plaintiff informed Dickens of her increasing pain on more than one occasion, but Dickens took no steps to address or resolve the issue and continually denied Plaintiff's requests to authorize the purchase of appropriate equipment. Finally, after several months of working through the pain, Plaintiff purchased an ergonomic keyboard, chair, and mouse on her own accord and subsequently sought Dickens' approval and reimbursement from Defendant. Defendant chastised Plaintiff for not following proper procedure. Plaintiff then stuck to the proper procedure in requesting an ergonomic keyboard arm to facilitate proper adjustment of the setup, but Dickens would not approve her request. Eventually, co-workers in the Steam Shop who sympathized with Plaintiff's condition found an old ergonomic keyboard arm in a storage unit and brought it to Plaintiff. So, about eleven (11) months after making her initial request to Dickens, Plaintiff finally had an ergonomically safe and sound work station, no thanks to Dickens.

16. In May of 2012, Dickens asked Plaintiff to accompany him and other employees of the Steam Shop on a trip across the country to display one of Defendant's steam engines. On approximately June 08, 2012, the crew, including Dickens and Plaintiff, departed Cheyenne, Wyoming, arriving later that evening in North Platte, Nebraska. Dickens asked Plaintiff to join him and the crew for dinner. At dinner, Dickens pulled up a chair next to Plaintiff and forcefully and purposefully pressed his legs against Plaintiff's leg. Plaintiff felt uncomfortable and moved her chair closer to another co-worker. Dickens then scooted closer and again pressed his legs forcefully and purposefully against Plaintiff's leg.

17. The next day, June 09, 2012, while travelling to Council Bluffs, Iowa, Dickens asked Plaintiff to dress in an old Union Pacific uniform with an old military cap he had personally selected, "so that people could see a woman dressed in uniform." At the next stop, Dickens adjusted Plaintiff's cap on her head and stated he was "pleased" with how Plaintiff

looked. When the work day was over, Plaintiff told Dickens she wanted to get into more comfortable clothes. Dickens then asked Plaintiff if he could adjust her cap again and complimented her on how she looked in the cap and uniform. Dickens said, "in the military, the most unattractive woman could be wearing this same style of hat and it would turn me on." Plaintiff felt very uncomfortable at this point and went into the car to change out of her cap and uniform. Dickens followed Plaintiff into the car. When Plaintiff asked Dickens to leave, he took his time gathering unnecessary items and then left.

18. A few days later, the steam engine and crew were in Omaha, Nebraska. Plaintiff attempted to keep her distance from Dickens, but Dickens sent several text messages to Plaintiff's personal cell phone. Some of the texts Dickens sent were ostensibly work-related, but one of the texts asked Plaintiff to come to dinner alone with him. Plaintiff denied the request and stated she would be eating with the other crew members. Dickens then asked if Plaintiff would join him later that night after hours to keep him company. Plaintiff denied the request and attended dinner with the other crew members. Dickens showed up, pulled up a chair next to Plaintiff, and again forcefully and deliberately pressed his legs against hers. Plaintiff and a fellow co-worker then left the restaurant.

19. From July 19 to July 21, 2012, the crew, including Plaintiff and Dickens, made several trips to Denver, Colorado. After arriving in Denver on one such trip, Dickens asked Plaintiff to accompany him at the train after hours. Plaintiff declined. On another such trip, Plaintiff was in uniform again, and again, Dickens adjusted Plaintiff's cap.

20. On several occasions from February to March of 2013, Dickens asked Plaintiff whether she would be working late. When Plaintiff responded that she would only work late if there was work for her to do, Dickens asked whether Plaintiff would stay after hours to keep him company since he "didn't have a life."

21. At one point during this period of time, Dickens asked Plaintiff to speak with him alone in the boiler dorm car, which Dickens had converted into an office. There, Dickens said nothing pertaining to work, but instead questioned Plaintiff about her personal life and family

background.

22. Throughout Plaintiff's employment as Administrative Assistant at the Steam Shop, Plaintiff has attempted to maintain a professional relationship with Dickens and other Steam Shop employees. Plaintiff attempted to brush off Dickens' boorish behavior at first, but the advances never ceased and became increasingly aggressive. Furthermore, Plaintiff became privy to a history of predatory behavior on the part of Dickens, which gave Plaintiff greater cause for concern. The following examples of Dickens' behavior or reputation are illustrative:

- a. Dickens had a reputation for bringing women into his hotel room while on overnight trips.
- b. Dickens even brought women with him into company vehicles or onto the trains for a good time. On one occasion, he was investigated by a Burlington Northern Santa Fe (BNSF) Special Agent in Pueblo Colorado and a Union Pacific Special Agent in Denver for bringing a potentially under-age girl on board the locomotive.
- c. Dickens propositioned a fellow co-worker in his hotel room and sent this co-worker text messages with photographs of his genitalia.
- d. Dickens drew a picture of a penis on the white board at the Steam Shop and labeled it with the name of a world-renowned consultant on steam locomotive restoration, who also happened to be a personal friend of most of the Steam Shop employees.
- e. In early 2013, Jamie Grell, a claims representative from Defendant's legal department came to the Steam Shop to perform an investigation. Ms. Grell asked Dickens where she might find a particular employee she needed to interview. Dickens invited Ms. Grell into his office and informed her that the employee was in another location but would be in the Steam Shop shortly. Dickens then proceeded to ask Ms. Grell personal questions about her love life and marital status. Throughout the conversation, Ms. Grell inquired as to the

status of the employee and whether he would soon be available to interview. Dickens repeatedly stated that he was somewhere else but that he would be in soon. Forty five minutes later, Ms. Grell announced that she was leaving and would have to conduct her interview another day. As she was leaving, another Steam Shop employee came into the office and greeted her. In the conversation that ensued, Ms. Grell learned that the employee she had come to interview had been in the Steam Shop and available the entire time. Ms. Grell then felt very uncomfortable and left the Steam Shop. Dickens followed her out of his office and out of the Steam Shop, and even into the parking lot without saying a word. Ms. Grell informed her superior of this encounter with Dickens and even filed a complaint with Defendant's EEO Department, but nothing came of the investigation.

23. Because of Dickens' unceasing passes at Plaintiff and in light of Dickens' reputation and behavior with other individuals (as evidenced by the examples above), Plaintiff filed a sexual harassment claim against Dickens with Defendant's Equal Employment Opportunity (EEO) Department on or about March 15, 2013.

24. Immediately after the claim was filed and the EEO Department began its investigation, Dickens removed Plaintiff from her office (which she shared with Dickens) and sent her into the break room to work. The break room was connected to the men's locker room, had little work space or ventilation, and did not have the ergonomic setup that existed in Plaintiff's office. The move to the break room was supposed to be temporary, but Dickens sent Plaintiff there more frequently and for longer periods of time as the sexual harassment investigation progressed.

25. When Dickens first sent Plaintiff to the break room to work, Dickens claimed to be on confidential telephone calls that required Plaintiff not be present. However, on one occasion, after spending an hour and a half in the break room, Plaintiff asked one of her co-workers whether Dickens was still on the phone. Dickens was still on the phone, yet other

Steam Shop employees and even non-railroad civilians were in the office with Dickens.

26. On April 1, 2013, Dickens proposed to move Plaintiff into the break room permanently. Dickens also slowly began taking job duties away from Plaintiff until her job became essentially meaningless. Plaintiff reported this to the proper EEO Department personnel, but no action was taken.

27. Plaintiff also became the subject of personal attacks and criticism from Dickens. On one occasion, Plaintiff answered a question from her fellow co-workers regarding an FRA regulation. Dickens found out about this and took Plaintiff into the boiler room to castigate her for attempting to answer the question. He told Plaintiff she didn't belong at the Steam Shop, she was only "admin," and she needed to hang up her uniform.

28. Plaintiff heard from fellow employees that Dickens wanted to resign or kill himself because of the EEO complaint Plaintiff filed against him. This terrified Plaintiff to the point that she feared for her life. Plaintiff met with a Union Pacific Special Agent to relay her concerns about working in the same office as Dickens, who had retaliated against her for filing a complaint, had threatened suicide, and had bragged to Plaintiff on prior occasions about his gun collection. Plaintiff is unaware of whether the Special Agent performed an investigation or did any follow-up.

29. Notwithstanding the seriousness of the situation and of Plaintiff's injuries and allegations in the internal EEO complaint, the complaint was dismissed by three (3) separate EEO managers. So, Plaintiff took her complaint to Lance Fritz, Defendant's Executive Vice President of Operations when Mr. Fritz came to a town hall meeting in Defendant's Cheyenne office on April 2, 2013. And on April 24, 2013, Plaintiff flew to Omaha to speak directly with Defendant's Director of the EEO Department about Dickens' harassing behavior. While at Defendant's headquarters in Omaha, Plaintiff also spoke with other officials and employees regarding the unsafe and hostile work environment created by Dickens at the Steam Shop and her safety concerns for Steam Shop employees. To the best of Plaintiff's knowledge, Defendant and/or its employees took no steps to address or remedy either situation. In fact, Melissa

Schoup, Kathie Nelson, and other employees within Defendant's EEO and Human Resources Departments, told Plaintiff to stick to her job duties and to stay out of Dickens' way. Ms. Nelson even told Plaintiff that if she had further concerns, she had to address them with Ms. Nelson or Dickens.

30. Dickens' sexual advances toward, and retaliatory measures against, Plaintiff, together with the actions or inaction of various employees of Defendant within the EEO Department and elsewhere, caused Plaintiff to suffer various injuries:

- a. Because Plaintiff was forced to work in the break room for extended periods of time in retaliation for filing an EEO claim, and/or because Dickens and other employees of Defendant did not accommodate Plaintiff with a safe work station for nearly a year, Plaintiff's carpal tunnel and pronator teres syndromes worsened significantly and developed into thoracic outlet syndrome. Plaintiff endured months of nearly intolerable pain from March, 2012 to July 1, 2013, the date on which Plaintiff took medical leave from the Steam Shop. Her pain shot from her neck down through her arms and into her fingertips and also included burning, tingling, and numbness.
- b. Because other treatment was ineffective, Plaintiff had surgery to treat her thoracic outlet syndrome (i.e. thoracic outlet decompression). On August 15, 2013, Plaintiff had surgery on her left side, which involved the removal of a rib on that side and the division of her muscles. On August 19, 2013, Plaintiff underwent the same procedure on her right side.
- c. Plaintiff is still recovering from the procedures and experiencing symptoms. Notwithstanding the substantial amount of pain medications and muscle relaxers she is on, Plaintiff experiences severe pain, has had difficulty breathing and sleeping, and has limited range of motion in her arms and neck. It is probable that further treatment will be necessary.
- d. Plaintiff is also being treated for depression and anxiety caused by Dickens'

conduct. Being subject to his sexual harassment and retaliation, witnessing his treatment of others in the Steam Shop, and being privy to his reputation and allusions to guns and suicide, caused Plaintiff to fear for her job and even for her life.

31. Before Plaintiff joined the Steam Shop as Administrative Assistant and began working with Edgar Dickens, she loved her job and the work environment at Union Pacific. Plaintiff is a fourth-generation railroader and always intended on working for the railroad and retiring through the railroad. Plaintiff has not returned to work, however, since taking medical leave on July 1, 2013. Nor will Plaintiff return to work at the Steam Shop if Dickens remains there. Plaintiff has requested transfers to other departments or locations, but Defendant has denied those requests. In essence, Plaintiff has been constructively discharged by the harassment of Dickens, her physical and emotional injuries, and the hostile and unsafe work environment he and other employees of Defendant created.

32. In July of 2013, Plaintiff filed an EEO claim with the State of Wyoming Department of Workforce Services, because of the inaction of Defendant and/or its employees in various departments addressing the issue of sexual harassment and retaliation as outlined above.

33. As an Administrative Assistant, Plaintiff's salary is approximately \$69,000.00 per year plus benefits and bonuses.

34. As a result of Dickens' behavior and the unsafe and hostile work environment Dickens and other employees of Defendant created, Plaintiff has sustained economic and non-economic losses, including but not limited to, lost wages and benefits, past, present, and future medical expenses, physical and emotional pain and suffering, and loss of enjoyment of life. Plaintiff's damages for the losses sustained will be more specifically set out and proved at trial.

35. Edgar Dickens is an employee of Defendant, and at all relevant times herein was employed as a fireman or as Senior Manager of Steam Operations. From approximately April, 2010 to the present time, Dickens was engaged in the course and scope of his duties as a Senior Manager of Steam Operations at Defendant's Steam Locomotive Shop in Cheyenne, Wyoming

when he engaged in the willful, wanton, reckless, or negligent behavior outlined above, which caused Plaintiff injuries and harm.

36. Defendant knew or had reason to know of Dickens' behavior, the harm it was causing to employees of the Steam Shop, including Plaintiff, and the unsafe and hostile conditions it created in the workplace.

37. Defendant is liable for Plaintiff's injuries and damages caused by the negligence of Defendant's employees, including Dickens, while acting within the course and scope of their duties, employment, or agency.

38. In causing Plaintiff's injuries and damages, Defendant was acting by and through Dickens and its other employees, agents, officers, officials, administrative personnel, or other persons acting on behalf or in the service of Defendant in an official capacity, whether with or without compensation.

FIRST CLAIM FOR RELIEF
NEGLIGENCE

39. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 39 above.

40. Pursuant to 45 U.S.C. 51, Defendant had a duty to act with ordinary care as Plaintiff's employer.

41. Defendant failed to act with ordinary care. Specifically, Defendant failed to provide Plaintiff with a reasonably safe place to work, free from harassment, intimidation, and retaliation. Defendant also failed to provide Plaintiff with an ergonomically sound and safe work station that would have prevented the aggravation of her carpal tunnel and pronator teres syndromes. In fact, Defendant aggravated Plaintiff's syndromes by allowing Dickens, its employee, to retaliate against Plaintiff for filing an internal EEO claim and force her to work in the even less ergonomically safe and sound break room. Defendant failed to act with ordinary care when it hired Dickens as Senior Manager of Steam Operations despite knowing

or having reason to know of Dickens' history of troublesome behavior. Defendant further failed to act with ordinary care in retaining, supervising, and/or controlling Dickens, having known or having had reason to know of Dickens' extreme and outrageous actions and behavior as Senior Manager of Steam Operations.

42. Defendant's negligence, including its failure to provide Plaintiff with a reasonably safe place to work, was a cause, in whole or in part, of injury to Plaintiff for which Plaintiff is entitled to an award of compensatory damages in an amount to be specifically proven at trial.

SECOND CLAIM FOR RELIEF
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

43. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 43 above.

44. Dickens' conduct, as outlined above, was extreme and outrageous and went beyond all possible bounds of decency and is intolerable in a civilized community.

45. Dickens' extreme and outrageous conduct intentionally or recklessly caused Plaintiff to suffer severe emotional harm, which has manifested itself in a variety of ways as outlined in Paragraph 31 above.

46. Whether a plaintiff can recover for *intentional* infliction of emotional distress under FELA is an unsettled question. See 123 A.L.R. Fed. 583. The language of FELA states explicitly that railroads will be responsible for the injury or death of employees resulting in whole or in part from their "negligence"; nevertheless, since FELA is supposed to be interpreted liberally so as to effect its purpose, the literal reference to negligence has not always been held to bar a claim based on an allegation of *intentional* misconduct. Therefore, when faced with the question whether intentional infliction of emotional distress states a cognizable claim under FELA, some courts have recognized that it is cognizable. See *id.*

47. It is likely that a Wyoming court would find a claim for intentional infliction of emotional distress cognizable. In *Leithead v. American Colloid*, 721 P.2d 1059 (Wyo. 1986), the Wyoming Supreme Court reasoned that if a person can recover damages for negligently

inflicted mental harm, then without question he should have a cause of action for intentional harm. *See also Sheltra v. Smith*, 392 A.2d 431, 432-433 (1978).

48. Thus, this Court should recognize Plaintiff's claim against Defendant for intentional infliction of emotional distress. Accordingly, Plaintiff is entitled to an award of compensatory damages.

THIRD CLAIM FOR RELIEF
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

49. Plaintiff realleges and incorporates by reference the allegations in paragraphs 1 through 49 above.

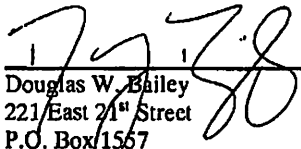
50. Dickens' harassment, intimidation, retaliation, and refusal to approve Plaintiff's requests to purchase ergonomically sound equipment created an unsafe and hostile work environment that exposed Plaintiff to physical harm, as outlined in Paragraphs 13, 16, and 25 above.

51. Physical symptoms arose and continue to arise after and because of the emotional distress sustained by Plaintiff and caused by Dickens, as outlined in Paragraph 31 above.

52. Dickens' extreme and outrageous conduct was a cause, in whole or in part, of severe emotional distress for which Plaintiff is entitled to an award of compensatory damages.

DATED this 7th day of February, 2014.

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